KEE CHAI HENG

v.

KETUA POLIS DAERAH KUALA MUDA & ANOR

HIGH COURT MALAYA, ALOR SETAR
HISHAMUDIN YUNUS J
[CIVIL APPEAL NO: 12-27-98]
30 MARCH 1999

CIVIL PROCEDURE: *Transfer - Sessions Court to Magistrate's Court - Whether Sessions Court has such power to transfer - Whether can only transfer case/proceedings to another Sessions Court - Whether Sessions Court should stay proceedings pending application to High Court for transfer to Magistrate's Court - Whether Sessions Court should proceed with hearing case - Subordinate Courts Act 1948, Third Schedule, s. 3(2) - Subordinate Courts Rules 1980, O. 47*

The appellant had filed an action against the respondents in negligence for the injuries he allegedly sustained whilst in police custody claiming special, general and exemplary damages. At the commencement of the hearing, the Sessions judge decided that the action was within the jurisdiction of the Magistrate's Court. After the parties had submitted on this issue, the Sessions judge ordered the action to be transferred to the Magistrate's Court. The appellant appealed.

Held:

[1] In civil cases, the Sessions Court does **not** have power to transfer any case filed before it to the Magistrate's Court even if it is of the opinion that the plaintiff's claim does not exceed the civil jurisdiction of the Magistrate's Court.

[2] Section 3(2) of the Third Schedule of the Subordinate Courts Act 1948 ('the SCA') provides that the Sessions Court has power to transfer a case before it to another court of co-ordinate jurisdiction, ie, only to another Sessions Court. Only the High Court has power to transfer a civil case from a Sessions Court to a Magistrate's Court and *vice versa* as provided in s. 12 of the Schedule of the Courts of Judicature Act 1964.

[3] Where it is very clear that an action should have been filed in the Magistrate's Court and not in the Sessions Court, the Sessions Court cannot transfer the action to the Magistrate's Court, but should stay further proceedings pending an application to the High Court by one of the parties for the action to be transferred to the Magistrate's Court. Conversely,

where the situation is unclear, such as in actions involving unliquidated damages, the Sessions Court should proceed with the trial of the action before it.

[4] Order 47 of the Subordinate Courts Rules 1980 must be read subject to s. 3(2) of the Third Schedule of the SCA.

[Appeal allowed; Sessions Court to hear action.]

Legislation referred to:
Courts of Judicature Act 1964, s. 12
Subordinate Courts Act 1948, ss. 3(2), 65, 90, 104
Subordinate Courts Rules 1980, O. 47

For the appellant - Jagdeep Singh Deo; M/s Karpal Singh & Co
For the respondents - Badlishah Hj Ahmad FC

Reported by Farah Naim

JUDGMENT

Hishamudin Yunus J:

This is an appeal against the decision of the learned Sessions Court judge Sungai Petani given on 23 March 1998.

Before the Sessions Court, the appellant was the plaintiff, whilst the respondents were the defendants.

The plaintiff is a truck driver. It is alleged in the statement of claim that on 11 October 1995 three police officers came to his house and arrested him.

It is further alleged that while in police custody, he was assaulted by the three police personnel. He suffered injuries.

The plaintiff filed an action against the defendants for negligence for failing to ensure that he was not harmed whilst under police custody.

In the civil suit before the Sessions Court the plaintiff claims for special damages, general damages and exemplary damages.

At the lower court, at the commencement of the hearing, the learned Sessions Court judge, on his own initiative, informed the parties that he was of the opinion that the claim was within the jurisdiction of the Magistrate's Court and that he had in mind to transfer the case to that court. After giving the parties the opportunity to submit on his intended course of action, he ordered that the case be transferred to the magistrate's court.

Dissatisfied with that order, the plaintiff now appeals.

Before the learned Sessions Court judge, the plaintiff had argued that the total value of damages claimed exceeded twenty five thousand ringgit and, hence, by virtue of s. 90 of the Subordinate Courts Act 1948 (the "SCA"), the claim was outside the jurisdiction of the magistrate's court.

In my judgment, as far as civil cases are concerned, a Sessions Court does not have the power to transfer any case filed before it to the magistrate's court even if the Sessions Court judge is of the opinion that the claim of the plaintiff does not exceed twenty five thousand ringgit. The law governing the powers of Sessions Courts and Magistrates' Courts to transfer cases is provided by s. 3(2) of the third schedule (which provides for the additional powers of Sessions Courts and Magistrates Courts) of the SCA. It reads:

> 3. (1) (Repealed).
>
> (2) Power, on application or of its own motion, to transfer any proceedings to another court of **co-ordinate** jurisdiction. [Emphasis added.]

It is clear from the above provision that the Sessions Court has the power to transfer a case that is before it only to another court of co-ordinate jurisdiction, that is to say, only to another Sessions Court, not a magistrate's court. In relation to the Sessions Court, a magistrate's court is not a court of co-ordinate jurisdiction. A Sessions Court is a court of higher jurisdiction. A Sessions Court has jurisdiction to hear any claim not exceeding two hundred and fifty thousand ringgit (see s. 65 of the SCA).

Only the High Court has the power to transfer a civil case from a Sessions Court to a magistrate's court and *vice versa*. This is provided by s. 12 of the schedule (providing for additional powers of the High Court) to the Courts of Judicature Act 1964 (the "CJA"), which provides:

> **Transfer of proceedings.**
>
> 12. Power to transfer any proceedings to any other Court or to or from any subordinate court, and in the case of transfer to or from a subordinate court to give any directions as to the further conduct thereof:
>
> Provided that this power shall be exercised in such manner as may be prescribed by any rules of court.

In any civil case before a Sessions Court, where it is very clear from the nature of the claim that the action should have been filed before the magistrate's court (say, an action to recover a debt of one thousand ringgit), the Sessions Court should not transfer the case to the magistrate's court. As I have just pointed out, it has no power to do so. The Sessions Court should stay further proceeding pending an application by one of the parties to the High Court

(under normal circumstances, one of the parties is likely to make such an application) for the case to be transferred to the magistrate's court. The order to transfer should only be made by the Sessions Court once the High Court has made an order that the case be transferred to the magistrate's court.

I presume that in some cases the plaintiff, upon realising his mistake in filing his case before the Sessions Court, would prefer to withdraw the case with liberty to file afresh before the magistrate's court rather than making an application to the High Court for the transfer of the case to the magistrate's court.

What I have just said above concerns a clear-cut situation. It might be that in many cases the situation is not one that is clear-cut (such cases might be common among claims involving unliquidated damages). In such cases, in order to avoid unnecessary delay and costs, it is, to my mind, prudent for the Sessions Court not to entertain the uncertainty and embark on an exercise – more so on its own motion – of determining, before the trial even begins, whether the total sum of the damages likely to be recovered by the plaintiff would be less or would exceed twenty five thousand ringgit. The Sessions Court should proceed with the trial of the case before it. After all, the Sessions Court is competent to hear such cases: as a general rule, what is within the civil jurisdiction of the magistrate's court is also within the jurisdiction of the Sessions Court. Moreover, in many such cases, the extent of the damages that should be awarded could only be determined with certainty after having the benefit of hearing the whole evidence and submissions.

In the present case, which involves a claim for both liquidated and unliquidated damages (perhaps there is justification to regard this case as being under the category of non clear cut cases), based on the case law precedent submitted before me by the learned counsel for the appellant, I am satisfied that there is a reasonable basis for the plaintiff to take the view that the total value of his claim would be likely to exceed twenty five thousand ringgit. Needless to say, as the trial has not begun and evidence has yet to be adduced, this opinion of mine as to the total value is merely a tentative one.

I would like to reiterate here that this judgment only concerns civil cases before Sessions Courts. I am not concerned in this judgment with criminal cases. As far as criminal cases are concerned, there are other considerations to take into account, for example, s. 104 of the SCA.

I am, however, aware of O. 47 (transfer of proceedings) of the Subordinate Courts Rules 1980 (the "SCR"). In my view, this Order must be read subject to s. 3(2) of the third schedule to the SCA. The SCR is merely a subsidiary legislation, whereas the SCA is an Act of Parliament. If so read, then O. 47

must be interpreted to provide for the transfer of proceeding from a subordinate court to another subordinate court of co-ordinate jurisdiction, that is to say, from a Sessions Court to another Sessions Court or from a Magistrate's Court to another Magistrate's Court.

Accordingly, I allow the appeal with costs. The Sessions Court Sungai Petani is to proceed to hear the case.